

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Illinois Commerce Commission
On Its Own Motion

-VS-

Commonwealth Edison Company

Investigation of Rate Design Pursuant
to Section 9-250 of the Public Utilities
Act.

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Docket No. 08-0532

**BRIEF ON EXCEPTIONS OF THE
STAFF OF THE ILLINOIS COMMERCE COMMISSION**

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Now comes the Staff of the Illinois Commerce Commission ("Staff"), by and through its undersigned attorneys, and pursuant to Section 200.830 of the Commission's Rules of Practice, 83 Ill. Adm. Code Section 200.830, respectfully submits this Brief on Exceptions to the Proposed Order issued by the Administrative Law Judges ("ALJs") on February 1, 2010 ("Proposed Order" or "PO").

I. INTRODUCTION

On September 10, 2008, the Illinois Commerce Commission ("Commission") initiated this proceeding under Section 9-250 of the Illinois Public Utilities Act to investigate all aspects of the rate design for Commonwealth Edison Company ("ComEd").

In general, the PO reviews the issues presented in this proceeding in a clear and concise manner, is well written, and reflects the positions taken by Staff, ComEd and numerous intervening parties. Although Staff supports many of the PO's conclusions there are certain issues to which Staff takes exception as set forth below.

II. EXCEPTIONS

The PO comes to certain erroneous conclusions that should be revised in order to develop an improved cost of service foundation for developing retail rates. The findings of concern include the allocation of customer care and uncollectibles costs as well as the regulatory process envisioned by the PO for incorporating the results of the workshop process. In addition to discussing these issues, Staff will clarify the PO's question concerning the resolution of the service cost issue.

A. The Workshop Process

The PO presents a number of findings concerning the conduct of workshops to addressing remaining cost of service issues. While some findings are reasonable, others require further revision and refinement.

The PO begins its discussion of the issue by agreeing on the need for a workshop process and identifying the scope accordingly:

... we direct the Staff to initiate a workshop to be led jointly by the Company and Staff, open to all parties, to examine: 1) the use of direct observation or sampling and estimation techniques of ComEd's system to develop more accurate and transparent differentiation of primary and secondary costs; 2) other utilities'

methods of differentiating primary and secondary systems and costs; 3) development of function based definitions of service voltages; 4) an analysis of which customer groups are served by which system service components; and 5) consideration of redefining rate classes on the basis of voltage or equipment usage to better reflect the cost of service. PO, pp. 39-40.

This is a reasonable set of issues for the workshop process to explore and this scope should be approved by the Commission.

The PO goes on to discuss the timetable for the workshops and states that they should be concluded within six months of the Order in this case. PO, p. 84. However, the PO fails to identify a starting date for the workshops. Staff had suggested in testimony that the workshops begin within three months of the issuance of the Order in this case. Staff IB, p. 38. Adoption of this proposal would accord a maximum of three months to complete the workshop process. Staff considers this timetable doable, but it would require the active cooperation of all the parties.

The next and more difficult issue concerns how the results of the workshop process are to be incorporated into the development of a new ECOSS for ComEd. The PO lays out the following procedure:

... ComEd is directed to incorporate the results of the workshop into a new ECOSS that will be presented for consideration and approval in this docket and for use in future rate cases. Parties may file verified initial and reply comments on the new ECOSS. After the comment period, the ALJs will issue another proposed order and exceptions will be scheduled and a final proposed order presented to the Commission. PO, p. 83.

Staff is concerned whether initial and reply comments envisioned by the Proposed Order will provide a sufficient basis for the parties to resolve the outstanding ECOSS issues in the wake of the workshop process. Depending on the outcome of the workshop process, there may be too many remaining issues that could not adequately

be addressed within the confines of two rounds of comments. Rather, a full evidentiary record may be necessary for these unresolved issues to be adequately addressed.

The PO appears to assume that the workshop process will necessarily move the parties toward consensus on all outstanding issues. However, that may not happen and the parties may continue to disagree about significant cost allocation issues after the workshops are completed. Take, for instance, the issue of using direct observation to more accurately identify the primary and secondary components of the distribution system. Parties to the workshops may have expectations about the impact of the direct observation process on the allocation of costs to primary and secondary service. If the direct observations fail to support those expectations, the parties will want to know why. However, it would be difficult to conduct any meaningful investigation within the confines of initial and reply comments. Similar problems may arise in the resolution of the customer care cost issue and the determination of what constitutes a reasonable allocation of costs between the distribution and supply functions. There is certainly a chance that the allocation of these costs ComEd provides in response to this Interim Order may not meet the expectations of REACT and, again, it could prove difficult to address any lingering concerns under the abbreviated process envisioned in the PO.

The Interim Order should reflect more realistic expectations for the workshop process which cannot be expected to bridge all remaining issues between the parties over cost of service issues. Rather, the workshops can provide a good starting point for resolving the differences and improving the accuracy of the studies themselves. If the workshop process is able to reach agreement on how ComEd should proceed towards

the next steps of addressing the deficiencies that have been identified in its ECOSS, then they will have served a useful purpose.

Thus, Staff would recommend an alternative plan for the post-workshop process with a more realistic chance of success. First, the workshops would seek to achieve consensus on: (a) concrete steps the Company can take to improve its cost allocation process, and (b) how these ECOSS issues should be resolved in the regulatory process. Then, the parties would craft a document that identifies those issues on which consensus has been reached and those where differences remain. At the conclusion of the workshops, the Company could file a new ECOSS for consideration by the Commission and the parties could file initial and reply comments concerning whether that revised ECOSS should be used as a foundation for future ratemaking by the Company.

This alternative approach gives the Commission more flexibility to resolve the cost of service issues raised in this proceeding. While the PO would require the Commission to adopt an ECOSS methodology at the conclusion of the workshop process, Staff's alternative language would give the Commission the leeway to accept a more limited set of agreements and set a plan for further resolution of cost issues on a going-forward basis.

This more flexible approach would benefit the parties as well. They could present arguments why certain cost issues cannot be resolved within the framework of initial and reply comments, but rather require a full evidentiary record that would only be possible in the context of a full rate case. Given the significant discord that has arisen over cost of service issues in previous cases it would be presumptuous to assume that

a workshop process followed by two rounds of comments would necessarily produce an ECOSS that could be used as the foundation for ratemaking in future dockets.

Based on this discussion, Staff recommends that the following paragraph be added to the end of the Commission Analysis and Conclusion section on page 40 of the PO:

The workshops would seek to achieve consensus on: (a) concrete steps the Company can take to improve its cost allocation process, and (b) how these ECOSS issues should be resolved in the regulatory process. Then, the parties would craft a document that identifies those issues on which consensus has been reached and those where differences remain.

Staff also recommends the following change to the Commission Analysis and Conclusions section on page 83 of the PO:

H. Commission Analysis and Conclusion

From all the issues and questions that remain with respect to ComEd's ECOSS, it is apparent that no change in the Company's tariffs should be ordered at this time. As discussed above, a workshop process is appropriate and should be initiated by Commission Staff. The workshop shall be convened within three months from the date of this order and completed within six months from the date of this order, unless extended by the ALJs for good cause shown. ComEd is directed to incorporate the results of the workshop into a new ECOSS that will be presented for consideration ~~and approval~~ in this docket and for use in future rate cases. The Commission will then decide whether the cost of service study submitted is sufficiently accurate to serve as a foundation for ratemaking in future proceedings. Parties may file verified initial and reply comments on the new ECOSS. After the comment period, the ALJs will issue another proposed order and exceptions will be scheduled and a final proposed order presented to the Commission.

Staff also recommends the following changes to the 12th finding and the corresponding ordering paragraph on page 85.

(12) Staff should commence a workshop proceeding to be convened within three months from the date of this order and completed within six months from

the date of this order to address issues relating to the primary/secondary split, street lighting and customer care costs as discussed above;

* * *

IT IS FURTHER ORDERED that Staff shall commence a workshop proceeding to be convened within three months from the date of this order and completed within six months from the date of this order to address issues relating to the primary/secondary split, street lighting and customer care costs as discussed above.

B. Customer Care Costs

The PO seeks to address the issue of how customer care costs should be allocated between the delivery service and supply functions. The PO first notes that these costs are currently allocated to supply on an avoided cost basis with less than 1% considered supply-related. PO, p. 68. The PO then goes on to note that “ComEd does not explain why an avoided cost study is used for these costs and for every other cost an embedded cost study is done.” Id. The PO turns its attention to REACT’s proposal to allocate these costs between delivery services and supply on an embedded cost basis. The PO notes that REACT allocates certain customer costs on a 50/50 basis between delivery services and supply which shifts approximately \$88 million in costs from delivery to supply. While characterizing the 50/50 allocator as arbitrary and therefore “almost useless”, the PO nevertheless finds that REACT’s embedded cost allocation process “does raise many valid points”. Id. The PO then directs ComEd to perform its own embedded allocation of customer care costs between delivery service and supply to give the Commission “the opportunity to review and compare both methodologies and reach a decision based on all the relevant information. “ Id.

Staff does not object to the proposal that ComEd be required to present an embedded cost allocation of these customer care costs. The regulatory process would not be harmed by an analysis to show how an embedded cost allocation of these costs might be conducted. Nevertheless, the adoption of an embedded cost allocation of these costs between delivery services and supply would present problems.

In its discussion the PO expresses concern that the policy issues surrounding the debate between an avoided cost and embedded cost allocation “are not thoroughly discussed by the parties”. Id. The PO goes on to state that Staff “touches” on the implications of adopting REACT’s proposal.” Id. In fact, Staff made three arguments in its IB which constitute compelling reasons to reject REACT’s proposal. The first is that the embedded cost approach would create rate disparities between sales and delivery customers that cannot be justified from a cost standpoint. This would send an erroneous price signal concerning the relative cost of bundled and unbundled service. The REACT proposal also appears to conflict with the Commission’s determination of the level of credit for ratepayers if their bill comes from the RES under the Single Bill Option. That credit is “a relatively low number”, 54 cents for residential customers and when the cost of postage is removed, the credit is “a little bit more than a dime”. Thus, for single bill it would be reasonable to assume that the Commission has concluded that “the bulk of billing costs should be with the delivery utility.” Tr. 465-466. In addition, the adoption of REACT’s proposal in this case would set a precedent not only for other electric utilities in Illinois, but for all gas utilities as well.

Staff continues to believe that these are compelling reasons not to adopt REACT's embedded cost allocation of customer care costs between the delivery and supply functions.

Based on this discussion, Staff recommends that the following changes to the Commission Analysis and Conclusion section starting at page 67 of the PO:

E. Commission Analysis and Conclusion

The question here is from whom should the customer care costs identified in the last rate case be recovered. ComEd's proposal allocates less than one percent of its customer care costs to supply based on an avoided cost analysis. ~~If the Commission's goal is to assign costs to the cost causers, it is difficult to imagine that less than 1% of ComEd's customer care costs are caused by supply related matters. ComEd does not explain why an avoided cost study is used for these costs and for every other cost an embedded cost study is done.~~

REACT's proposal would lower the delivery portion of the bills of customers that have switched. For customers that still take delivery and supply from ComEd, their costs would be about the same, but would be recovered through their supply charge, not delivery charge. REACT's proposal would shift \$88 million in distribution costs from delivery function to the supply function based on REACT witness Merola's embedded cost analysis.

The choice between these two methodologies is based in policy, ~~but the policy issues are not thoroughly discussed by the parties. ComEd cites Section 16-118 of the Act in support of its position and, but does not explain how an increase in costs is impacted by the manner in which costs are allocated. While Staff addresses also touches on the implications of adopting REACT's proposal but it is hard to evaluate the best outcome without having the results of an embedded cost of service study performed by the Company. REACT asserts that it has done such a study, but its arbitrary 50-50 allocator renders it almost useless.~~

~~REACT, however, does raise many valid points and when the two methodologies are compared questions arise.~~ The record before us does not provide all of the answers and because of the investigatory nature of this docket, it is appropriate that these issues be addressed in the workshop. First, the parties cannot agree on what costs we are allocating. Is it merely the O&M costs as proposed by ComEd or the much larger amount proposed by REACT that includes all the customer care costs in ComEd's ECOSSE? Also are these costs first divided between residential and non-residential and if not, should they be?

~~Also, ComEd and REACT both attempt to identify which costs are clearly supply and which are delivery. REACT, however, points to functions that clearly support supply, yet no costs are allocated to supply for these functions in ComEd's proposal, e.g., the Large Customer Services Department. REACT proposes allocating 1/3 of these costs to supply because 1/3 of the functions support supply. The problem with this approach is that the record does not contain evidence that 1/3 of the functions are purely supply or even that these functions are 1/3 of the costs for this department. REACT informs us that it was unable to get this information from ComEd. This issue is appropriately explored in the workshop process. Similarly, REACT raises a valid argument that some portion of the calls received by the Customer Call Center should be allocated to supply.~~

After each party assigns the costs it believes are clearly related to supply or deliver, their methods completely differ. At this point, ComEd chose to use an avoided cost methodology and looked at whether increased switching would lower the Company's customer care costs. The result of ComEd's study is that no further costs are allocated to supply.

For REACT, after Mr. Merola assigned costs that he believes are clearly delivery to the delivery customer, he took the remaining costs and divided them 50-50 between delivery and supply which. ~~Although this is an arbitrary allocation and therefore cannot be adopted, REACT's methodology is consistent with an embedded cost methodology.~~ Because the record does not contain information to calculate a more the appropriate allocator that that which ComEd currently uses, this is an issue appropriate for discussion in workshops. To facilitate the workshop process, ComEd is directed to perform an embedded cost study for these costs and present it for consideration and discussion in the workshop.

While the Commission does not seek to prejudge the issue, it has ongoing concerns about an embedded allocation of customer care costs between delivery and supply for the reasons argued by Staff. In particular, the embedded cost approach would create rate disparities between sales and delivery customers that cannot be justified from a cost standpoint. This would send an erroneous price signal concerning the relative cost of bundled and unbundled service. The REACT proposal also would conflict with the Commission's determination of the level of credit for ratepayers if their bill comes from the RES under the Single Bill Option. That credit is "a relatively low number", 54 cents for residential customers and when the cost of postage is removed, the credit is "a little bit more than a dime". Thus, for single bill it would be reasonable assume that the Commission has concluded that "the bulk of billing costs should be with the delivery utility." Tr. 465-466. In addition, the adoption of REACT's proposal in this case would set a precedent not only for other electric utilities in Illinois, but for all gas utilities as well.

Nevertheless, the Commission believes the record would benefit from the Company providing an embedded allocation of these costs for the workshops and it is open to further arguments both for and against the embedded cost approach in future proceedings.

~~ComEd notes that if the Commission adopts any portion of REACT's adjustment, then the Order must make provision for recovery of those costs through either Rider PE — Purchased Electricity or Rate BESH — Basic Electric Service Hourly Pricing, as applicable. ComEd Ex. 4.0 at 8. When ComEd next requests a rate increase, these costs should be allocated as decided in this docket after the workshop process and recovered through either Rider PE or Rate BESH.~~

In the event that ComEd files for a rate increase prior to the completion of the workshop process, ComEd is directed to file an embedded cost of service study for these costs and to also include the results of its avoided cost study. This will give the Commission the opportunity to review and compare both methodologies and reach a decision based on all the relevant information. If more costs are allocated to supply, then Rider PE or Rate BESH should also be modified.

C. Uncollectibles

The PO's findings with respect to uncollectibles costs raise two issues. The first issue stems from the PO's finding that uncollectibles should be allocated across all residential customers. PO, p. 80. Second, despite recommending allocation, rather than direct assignment, the PO fails to identify what allocator would be appropriate to use for those costs.

The PO's finding that these costs should be allocated, rather than directly assigned, appears to conflict with cost causation principles. The PO objects to Staff's argument on this issue, stating it "is based on the cost of serving the type of people that live in apartments, not the cost of providing electric service to people that live in multi-family units." Id. The PO goes on to contend "[c]ustomers that live in apartments that do

pay their bills do not cause ComEd's costs to rise any more than paying customers that live in single-family residences. " According to the PO, "[i]f a customer's neighbor does not pay his bill, this does not mean that the paying customer caused ComEd to incur the expense of the neighbor's uncollectible account." Id. Based on this discussion, the PO accepts the City's argument that these costs should be allocated across all residential customer classes. Id.

There is an inconsistency in the position taken by the PO. The argument that customers in a class should not have to pay for those customers within their class who fail to pay can be extended beyond the residential class to all rate classes. If higher uncollectibles for one residential class should be recovered from all residential customers, then by the same logic higher residential uncollectibles should not just be recovered from residential customers, but from non-residential customers as well. The fact that the PO applies this allocation approach within the residential class but not to other class is testament to the inconsistency of its conclusion on this matter.

In addition, this concept of spreading out the costs adopted by the PO appears to conflict with the way costs are apportioned in the real world. When it comes to automobile insurance, younger drivers or those who have accumulated speeding tickets must pay more whether or not they have had accidents that actually cost the company. The fact that they are in a high risk group is deemed sufficient reason to charge them more. Similarly, high risk individuals pay more for life and health insurance. When it comes to credit, individuals and businesses are assigned ratings and their ability to get loans and the rates they pay are determined accordingly. The evidence in this proceeding indicates that customers within some residential classes are at greater risk

of nonpayment than those in other classes. The logical, cost-based approach would be to reflect these relative risks in the respective rates for customers within each residential class.

With respect to the choice of allocator for these costs, the PO cites discussion by City Witness Bodmer of possible allocators to use but does not indicate a preference. It is not clear under the circumstances why the PO would find that these costs should be allocated but not state how. Some explanation would be helpful if the PO believes the choice of an allocator for these costs should be postponed to a later date.

For these reasons, the PO's proposal to change the method by which uncollectibles costs are allocated should be rejected and the present cost-based approach used by ComEd should be reaffirmed. Consistent with this conclusion, the final paragraph of the Commission Analysis and Conclusion section on page 80 of the PO should be revised accordingly:

Staff and the AG rely on cost-causation principles to support their position. This argument is based on the cost of serving the type of people that live in apartments, not the cost of providing electric service to people that live in multi-family units. This is a valid an invalid distinction for rate design purposes. The available information indicates that customers in each residential rate class fail to pay bills at different rates. In other words, customers in some classes are more likely to not pay than customers in other classes. A cost-based approach would recognize that some classes are more risky from an uncollectibles standpoint than other classes. Therefore, the uncollectibles costs that each class pays should be different and unique and based upon that class' specific risk of nonpayment. There is an inconsistency in the City's argument that uncollectibles should be allocated across residential classes. If customers are not held responsible for the uncollectibles within their class then the allocation of these costs should not be limited to residential customers. Rather, uncollectibles should then be allocated across all retail customers, residential and nonresidential alike. The proposal to limit this allocation across residential customers only is illogical and inconsistent. Therefore, for the above reasons, we find that ComEd's existing method of assigning uncollectibles costs to each respective class is cost-based and should therefore be maintained.~~Customers that live in apartments that do pay their bills do not cause ComEd's costs to rise any more than paying~~

~~customers that live in single-family residences. If a customer's neighbor does not pay his bill, this does not mean that the paying customer caused ComEd to incur the expense of the neighbor's uncollectible account. Thus, the Commission agrees with City witness Bodmer's analysis of these costs and finds that uncollectible costs are not like other costs ComEd incurs in providing service; they are not associated with providing facilities or equipment to specific groups of customers.~~

D. Service Costs

The PO raised a question about Staff's position with respect to the Company's revised allocator for service costs. The PO notes that "[i]n its Initial Brief, Staff states that the 'Company's explanation of how service drops are determined presents a problem.'" Staff IB, p. 30. Staff goes on to explain why it believes there is a problem, but fails to explain whether the problem conflicts with Staff's general position that the Company's analysis is correct. Unfortunately ComEd does not address this in its Reply Brief. " PO, p. 77.

To clarify, Staff does recommend the use of the Company's revised allocator in the ECOS. The problem Staff had identified in its IB was limited to Mr. Meehan's explanation of how the allocations are derived which Staff did not consider an accurate description. Nevertheless, Staff did not have any disagreement with the revised allocator itself.

Based on the forgoing discussion, Staff proposes the following revisions to the second full paragraph of page 77 of the PO:

With respect to service drops, the Commission agrees with ComEd that the costs for providing service drops is are also dependent on the number of customers. Moreover, we note that ComEd notes that it provides standard size lengths of service regardless of customer's usage. ComEd's treatment of these is accepted, but one question remains. In its Initial Brief, Staff states that it

supports the Company's revised method of allocating service costs. However, Staff did note that the "Company's explanation of how service drops are determined presents a problem." Staff Init. Br. at 30. Thus, while taking exception on the Company's choice of language, Staff finds that the problems with ComEd's services allocator have been resolved. Staff goes on to explain why it believes there is a problem, but fails to explain whether the problem conflicts with Staff's general position that the Company's analysis is correct. Unfortunately ComEd does not address this in its Reply Brief.

III. CONCLUSION

Staff respectfully requests that the Illinois Commerce Commission approve Staff's recommendations in this docket.

Respectfully submitted,

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